

### **REMARKS**

The Final Office Action rejected claims 1-4 and 10-15 under 35 U.S.C. § 102(a) as being anticipated by Nehring, claims 1 and 5-9 under 35 U.S.C. § 102(e) as being anticipated by Meendering, and claims 54-56 under 35 U.S.C. § 103(a) as being unpatentable over Nehring in view of Een. In response to these rejections, Applicant offers the following remarks and the accompanying 37 C.F.R. § 1.132 Declaration of Stephen P. Samaha.

#### **35 U.S.C. § 102 Rejections**

- a. As supported by the 37 C.F.R. § 1.132 Declaration of Stephen P. Samaha, Nehring and Meendering each fail to disclose the “load bearing” wall aspect of independent claim 1 and its dependent claims.**

Independent claim 1 recites a block comprising “an outer wall and an inner wall, at least one of which is vertical load bearing.” As explained in the accompanying 37 C.F.R. § 1.132 Declaration of Stephen P. Samaha, the term “load-bearing” is a well-known term of art in the fields of construction, structural engineering, and architecture. Load-bearing is defined as being “capable of bearing a structural load”<sup>1</sup> or “supporting a superimposed weight or force.”<sup>2</sup>

As declared by Stephen P. Samaha, one who is skilled in the art of building construction and building products would understand that the block recited in independent claim 1 would have at least one wall that is sufficiently strong to support structural loads in the building construction or structural engineering sense of the word. In other words, at least one of the walls comprising the block would be sufficiently strong to support superimposed structural loads in addition to the loads imposed by fellow blocks located in higher block courses.

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<sup>1</sup> see definitions at: Dictionary.com at <http://dictionary.reference.com/search?q=load-bearing>; WordNet 1.7 Vocabulary Helper at <http://poets.notredame.ac.jp/cgi-bin/wn?cmd=wn&word=load-bearing>; Ultralingua.net at [http://ultralingua.net/results.html?lookup\\_action=enlenglishlEnglish&lookup\\_letters=load-bearing](http://ultralingua.net/results.html?lookup_action=enlenglishlEnglish&lookup_letters=load-bearing); Lookwayup.com at [http://lookwayup.com/lwu.exe/lwu/d?t=&h&s=f&b=&w=load-bearing&pos=a&Syn\\_ID=](http://lookwayup.com/lwu.exe/lwu/d?t=&h&s=f&b=&w=load-bearing&pos=a&Syn_ID=). Copies of these web pages are provided in Appendix A.

<sup>2</sup> see definitions at: National Contractor Referrals at <http://www.contractorreferral.com/cgi-bin/glossary.pl?TERM=L>. A copy of this web page is provided in Appendix A.

Nehring utilizes an “expanded foam plastic material” for its sidewalls 22, 24. *Nehring, col. 4, l. 45*. Similarly, Meendering utilizes “sheets of foamed plastic material to provide the walls for the form.” *Meendering, col. 1, ll. 58-59*. As declared by Stephen P. Samaha, one skilled in the art of building construction and building products would not find that the foam plastic walls of Nehring or Meendering are load-bearing. Instead, they would find that the foam plastic walls are good examples of non-load-bearing in the building construction or structural engineering sense of the word, because their foam plastic walls are not sufficiently strong to be used to bear a structural load in a building structure. In other words, they are not sufficiently strong to support superimposed structural loads in addition to the loads imposed by fellow blocks located in higher block courses.

As declared by Stephen P. Samaha, one skilled in the art of building construction and building products would not find that Nehring or Meendering disclose, teach or suggest a “load-bearing” inner or outer wall in a block, as recited in independent claim 1. Because Nehring and Meendering do not disclose this aspect of independent claim 1, it fails to anticipate the claim and its dependent claims. Therefore, for at least this reason, Applicant respectfully requests that the 35 U.S.C. § 102 rejections of claims 1-16 be reconsidered and withdrawn.

35 U.S.C. § 103 Rejections

**a. The Nehring/Een combination fails to disclose, teach or suggest the “load bearing” wall aspect of independent claim 1 and its dependent claims 54-56.**

Claims 54-56 dependent on Independent claim 1, which recites a block comprising “an outer wall and an inner wall, at least one of which is vertical load bearing.” As explained in the preceding section, Nehring does not disclose, teach or suggest this aspect of independent claim 1 and its dependent claims.

Nehring’s deficiency is not remedied by its combination with Een. For example, Een discloses a “reinforced door constructed of wood and/or insulation material.” *Een, p. 1, col. 1, ll. 2-3*. Because doors are movable, they are not “load-bearing” in the building construction or structural engineering sense of the word. This is why doors are mounted within a frame that has a structural header that structurally supports the wall structure above the door. Therefore, it is

clear that the Nehring/Een combination does not disclose, teach or suggest the “load bearing” wall aspect of independent claim 1 and its dependent claims. For at least this reason, Applicant respectfully requests that the 35 U.S.C. § 103 rejections of claims 54-56 be reconsidered and withdrawn.

**b. The Nehring/Een combination fails to disclose, teach or suggest the “weep gap” aspect of claim 55.**

Claim 55 recites a block “wherein the partitioning panel is placed closely adjacent the outer wall so as to define a weep gap between the panel and the outer wall. A weep gap is a space internal to a wall that accumulates moisture that may already be in the wall or may be penetrating the wall. As the accumulated moisture descends down the weep gap, the weep gap guides the accumulated moisture to an exit point where the accumulated moisture may exit the wall to the exterior environment. In addition to its other functions, Applicant’s partitioning panel can, with proper placement adjacent the outer wall, provide one surface of a weep gap.

Een does not disclose this aspect of claim 55, but instead teaches against it. For example, when discussing Figs. 5 and 6, Een states that the “insulation plates 8 ... are arranged against the inner sides of the panels.... [A] plate 9 of waveboard or the like is placed between the insulating plates 8 to hold them pressed against the inner surfaces of the panels 1 and 2.” *Een*, p. 2, col. 1, ll. 5-13. Thus, no weep gap is defined “between the panel and outer wall,” as recited in claim 55. In fact, Een has no discussion of handling water that might accumulate or penetrate the door.

When discussing Figs. 7 and 8, Een states that there may be “fireproof insulating plates 13 at the inner sides of the panels 1 and 2,” which are again held against the panels by a layer of waveboard. *Een*, p. 2, col. 1, ll. 27-31. “To hold the insulating plates 13 in position, even if one of the panels should be destroyed by fire, there are arranged hooks or lateral projections 14 ... on the reinforcing bars, or instead a thin iron plate 15 may be positioned between the panels and the insulating plates.” *Een*, p. 2, col. 1, ll. 31-37. “Instead of an iron plate there may be used a preferably fine meshed netting 16 between the panels and the insulating plates.” *Een*, p. 2, col. 1, ll. 40-43. Once again, no weep gap is defined “between the panel and outer wall,” as recited in claim 55. Therefore, it is clear that the Nehring/Een combination does not disclose, teach or suggest a panel providing the “weep gap” aspect of claim 55. For at least this reason, Applicant

respectfully requests that the 35 U.S.C. § 103 rejection of claim 55 be reconsidered and withdrawn.

This application now stands in allowable form and reconsideration and allowance is respectfully requested.

Respectfully submitted,

**DORSEY & WHITNEY LLP**  
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Date: \_\_\_\_\_

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By: \_\_\_\_\_

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Attachments: Declaration Under 37 CFR 1.132 of Stephen P. Samaha  
Appendix A to Declaration, five references defining "load-bearing"